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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,231	07/10/2003	Keiichi Kitazawa	040803-0304812	2256
909	7590	03/17/2005	EXAMINER	
PILLSBURY WINTHROP, LLP			ZANELLI, MICHAEL J	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	

3661

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,231

Applicant(s)

KITAZAWA ET AL.

Examiner

Michael J. Zanelli

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-23 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/10/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The application filed 7/10/03 has been examined. Claims 1-23 are pending.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
3. The IDS filed 2/12/04 has been considered.
4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
5. Claims 21-23 are objected to because of the following informalities:
 - A. As per claim 21, at line 4 delete "with". At line 5 it appears that the comma should be placed after the first recitation of "condition" rather than after the second recitation.
 - B. All claims depending from an objected base claim are also objected to as containing the same deficiencies.
6. Claim 13 is objected to under 37 CFR 1.75(c) as being in improper dependent form because a dependent claim must refer back to a preceding claim in the alternative only. Claim 13 is attempting to incorporate subject matter of claim 12 and claim 6. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.
7. Claims 1-12 and 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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A. As per claim 1, the claim is vague as to the limitation “a usual running state of a vehicle” insofar as it is unclear as to what constitutes a “usual” running state.

B. All claims depending from a rejected base claim are also rejected as containing the same deficiencies.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-2, as best interpreted given the deficiency noted above, are rejected under 35 U.S.C. 102(b) as being anticipated by Hattori et al. (5,532,929) or Cullen et al. (6,304,809).

A. As per claims 1-2, the cited prior art discloses a system for controlling vehicle driving power (i.e., “acceleration control device”) which includes means for calculating an aimed accelerator opening based on accelerator pedal displacement and vehicle speed and for outputting a control signal to reduce a difference of the accelerator opening and aimed accelerator opening. Acceleration control is started upon determination of a “usual running state” (i.e., constant cruising speed) and takes into consideration a speed difference between a desired speed and the vehicle speed. See Hattori: Figs. 22-24; cols. 7-8; cols. 23-25 and Cullen: col. 3, line 26 to col. 5, line 20; col. 5, line 53 to col. 6, line 12.

10. Claims 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Roulet (6,330,506).

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A. As per claims 21-22, Roulet discloses a control method for an acceleration control device. As shown in Fig. 1, displacement of an accelerator pedal (13) is transmitted to the control device (10) and is used in determining control of the engine (12). Auto-cruising control is automatically actuated to set a desired vehicle speed based on displacement of the accelerator pedal and vehicle speed. See col. 1, lines 52-64; col. 3, line 46 to col. 4, line 42.

11. Claims 1, 2, and 21-23, as best interpreted given the deficiency noted above, are rejected under 35 U.S.C. 102(b) as being anticipated by Kerns (6,078,860).

A. As per claims 1-2 and 21-23, Kerns discloses an acceleration control device (Fig. 1) which includes means (16) for calculating a desired accelerator opening based on accelerator pedal displacement (18) and vehicle speed (22) such that a difference is reduced to zero and a control signal is automatically output to control the accelerator opening upon determining a "usual running state" (i.e., constant speed). Fig. 4 shows the relationship between accelerator pedal position, acceleration/deceleration and vehicle speed (i.e., claims 21-23). As noted in col. 3, lines 54-56, the disclosed invention enables one to automatically engage the cruise control system based only on the displacement of the accelerator pedal and the running condition of the vehicle. See also cols. 3-6.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited documents are of general interest.

13. Claims 3-12 and 14-20 are distinguishable over the prior art. As per claim 3, the prior art of record does not show or reasonably suggest, in combination with the other claimed

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subject matter, detecting the "usual running state" of the vehicle based on vehicle speed, displacement amount of the accelerator pedal, fuel flow rate and gear position. Dependent claims 4-12 and 14-20 are distinguishable for at least the same reasons.

14. Claims 3-12 and 14-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (703) 305-9756. The examiner can normally be reached on Monday-Thursday 8:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHAEL J. ZANELLI
PRIMARY EXAMINER

/mjz